

ASSEMBLY BILL

No. 1044

Introduced by Assembly Member Wright

February 25, 1999

An act to amend Section 16583.5 of the Government Code, relating to the Student Aid Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 1044, as introduced, R. Wright. Student Aid Commission: delinquencies: collection.

Existing law requires the Student Aid Commission to enter into an interagency agreement with the Franchise Tax Board to collect all or part of the commission's outstanding accounts receivable in any manner authorized by law for the collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order for levy. The commission and board are required to provide notice to a debtor according to specified criteria. The board and the Controller are each authorized to adopt regulations to implement these provisions, which are repealed as of January 1, 2002.

This bill instead would require the Franchise Tax Board to collect all or part of the commission's outstanding accounts receivable in the manner authorized by law for the collection of a delinquent personal income tax liability pursuant to issuance of an order for levy. It would revise the criteria for referral for collection and the manner in which notice is given to a debtor by the commission and the board, and set forth requirements for hearing and judicial review regarding referrals. It would require the board, the commission, and the

Controller to adopt regulations implementing these provisions and would specify the accounts to which certain of its provisions shall apply.

This bill would also extend the repeal date of these provisions to January 1, 2003.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 16583.5 of the Government
2 Code is amended to read:

3 16583.5. (a) Notwithstanding any other provision of
4 law, the Student Aid Commission shall enter into an
5 interagency agreement with the Franchise Tax Board to
6 collect all or part of the commission's outstanding
7 accounts receivable.

8 (b) (1) ~~The Student Aid Commission~~ *commission*
9 shall develop criteria and policy that would define when
10 an account receivable is delinquent and thereby subject
11 to collection by the Franchise Tax Board. For purposes of
12 this section, at a minimum, "delinquent" means that all
13 of the following conditions exist prior to referral to the
14 Franchise Tax Board:

15 (A) The amount is due and payable.

16 ~~(B) Notice of the amount due and payable was sent to~~
17 ~~the debtor at the last known address maintained by the~~
18 ~~Student Aid Commission.~~

19 ~~(C) In the case of complaints or protests by the debtor,~~
20 ~~the debtor has been provided all required administrative~~
21 ~~hearings, and does not have a judicial proceeding~~
22 ~~pending with respect to that debt.~~

23 ~~(D) Notwithstanding Section 16584, the Student Aid~~
24 ~~Commission has referred the account to a private debt~~
25 ~~collector and, not less than nine months following that~~
26 ~~referral, the private debt collector has been unable to~~
27 ~~collect the account.~~ *The commission has complied with all*
28 *notice requirements of this section.*

29 *(C) In the case of complaints, protests, applications for*
30 *loan discharge, or applications for reimbursement from*

1 the Tuition Recovery Fund under Article 12
2 (commencing with Section 94944) of Chapter 7 of Part 59
3 of Division 10 of Title 3 of the Education Code made by
4 or on behalf of the debtor:

5 (i) The debtor has been provided all required
6 administrative hearings and appeals and there has been
7 a final adjudication or resolution of the complaint,
8 protest, or application. For the purposes of this section,
9 the commission shall be required to certify final
10 resolution of a debtor's application for reimbursement
11 from the Student Tuition Recovery Fund only if the
12 Bureau for Private Postsecondary and Vocational
13 Education can provide the commission with a listing, in
14 machine-readable form, of those debtors who have filed
15 an application.

16 (ii) The debtor does not have a judicial proceeding
17 pending against any party with respect to the loan at
18 issue.

19 (D) The commission has referred the account to a
20 private debt collector and, not less than nine months
21 following that referral, the private debt collector has
22 been unable to collect the account.

23 (E) The commission has provided the debtor with an
24 explanation of the provisions of the federal Higher
25 Education Act of 1965 (Public Law 89-329), as amended,
26 and its implementing regulations with respect to
27 reinstatement of the debtor's eligibility for assistance
28 under Title IV of that act and with respect to
29 rehabilitation of the debtor's loans.

30 (F) The commission has provided the debtor with an
31 explanation of the availability of other options for curing
32 the delinquent account, including, but not limited to,
33 obtaining a consolidation loan under the federal Higher
34 Education Act of 1965 (Public Law 89-329), as amended.

35 (2) This policy and criteria may include a minimum
36 dollar threshold for delinquencies that would be referred
37 to the Franchise Tax Board.

38 ~~(c) When a delinquency is referred to the Franchise~~
39 ~~Tax Board pursuant to this section, the amount of the~~
40 ~~delinquency and any interest on the delinquency or other~~

1 amounts that accrued prior to or accrue subsequent to the
2 date of referral, shall be collected by the Franchise Tax
3 Board in any manner authorized under the law for
4 collection of a delinquent personal income tax liability,
5 including, but not limited to, issuance of an order and levy
6 under Article 4 (commencing with Section 706.070) of
7 Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of
8 Civil Procedure in the manner provided for earnings
9 withholding orders for taxes and including entering into
10 agreements as authorized by Sections 19376 and 19377 of
11 the Revenue and Taxation Code.

12 (d) Any law providing for the collection of a
13 delinquent personal income tax liability, including Part
14 10.7 (commencing with Section 21001) of Division 2 of the
15 Revenue and Taxation Code, which includes Section
16 21021 of the Revenue and Taxation Code relating to the
17 awarding of damages for reckless disregard of
18 procedures, shall apply to delinquencies referred under
19 this section in the same manner and with the same force
20 and effect and to the full extent as if the language of the
21 law had been incorporated in full into this chapter, except
22 to the extent that any provision is either inconsistent with
23 this chapter or is not relevant to this chapter.

24 (e) The Franchise Tax Board shall provide notice to
25 the debtor at the most recent address of record or last
26 known address that payment by the debtor of the amount
27 due within a certain timeframe, which at a minimum shall
28 be 10 days after the date of the notice, shall prevent
29 further collection action.

30 (f) Any information, information sources, or
31 enforcement remedies and capabilities available to the
32 Student Aid Commission shall be available to the
33 Franchise Tax Board for purposes of collecting
34 delinquencies referred under this section.

35 (g) Any agreement entered into pursuant to
36 subdivision (a) shall include all of the following:

37 (1) The criteria, standards, and procedures for
38 referring the delinquencies to the Franchise Tax Board
39 for collection pursuant to this section.

~~(2) A statement that the delinquencies referred to the Franchise Tax Board are delinquent, as defined by the Student Aid Commission under paragraph (1) of subdivision (b), and subject to collection by the Franchise Tax Board.~~

~~(3) A statement that in the event a person whose delinquency is referred under subdivision (c) notifies the Franchise Tax Board that there is a disagreement as to the amount due subject to collection, the Franchise Tax Board may, upon notification by that person, refer the person to the Student Aid Commission, return the account to the Student Aid Commission, or rescind any collection action that may have been taken.~~

(c) (1) At least 30 days prior to the referral to the Franchise Tax Board, the commission shall provide actual notice to the debtor, written in simple language in English, and at a minimum, the debtor's rights, obligations, and process for disputing the debt also shall be provided in Spanish, at the last known address, of at least the following information:

(A) Amount of the debt.

(B) That the debt is about to be referred to the Franchise Tax Board.

(C) The debtor's rights and remedies, including, but not limited to, all of the following:

(i) The debtor's right to request documents.

(ii) The debtor's right to object to the referral and have a hearing on the objection, and the date by which an objection must be made.

(iii) A listing of the available defenses to repayment available to the debtor.

(iv) The debtor's right to appeal.

(v) The debtor's right to seek judicial review.

(vi) The debtor's right to be represented by counsel or other advocate.

(2) A form shall accompany the notice described in this subdivision to allow the debtor to object to the proposed referral. The form shall contain both of the following:

1 (A) Descriptions of the defenses to repayment of the
2 student loan and checkoff spaces where the debtor may
3 indicate which defenses are applicable to the debtor. The
4 list of available defenses shall include, but not be limited
5 to, any claims or defenses the debtor may have under the
6 law against the educational institution for which the
7 debtor's student loans were obtained, any claim that
8 repayment would cause the debtor hardship, any claim
9 that the debtor has a pending application for loan
10 discharge, reimbursement from the Student Tuition
11 Recovery Fund under Article 12 (commencing with
12 Section 94944) of Chapter 7 of Part 59 of the Education
13 Code, or a judicial proceeding with respect to the loan at
14 issue, and any additional defenses listed by the
15 commission on 'request for review' forms supplied as part
16 of the federal tax offset process administered by the
17 commission.

18 (B) A description, written in simple language in
19 English and Spanish, of the debtor's right to object to the
20 referral and have a hearing on the objection, the date by
21 which an objection must be made, the right to appeal, the
22 right to seek judicial review, and the right to be
23 represented by counsel or other advocate.

24 (3) The notice described in this subdivision shall also
25 be accompanied by a list of organizations that provide
26 free legal services in the counties in which the
27 commission maintains an office and that may be able to
28 assist the debtor or refer the debtor to an organization in
29 the debtor's county that can assist the debtor.

30 (d) (1) If the debtor objects to the referral, the
31 commission shall provide an opportunity for a hearing,
32 which at the debtor's option may be written or oral. An
33 oral hearing may, at the debtor's option, be either in
34 person or by telephone. The time and location of any oral
35 hearing shall be set by the commission, provided that any
36 in-person hearing shall be at the office of the commission
37 closest to the county in which the debtor resides. All
38 telephonic charges shall be the responsibility of the
39 commission.



1 (2) If the debtor's objection to the referral is
2 postmarked or, if not postmarked, is received by the
3 commission on or before the 25th day following receipt by
4 the debtor of the notice described in paragraph (1) of
5 subdivision (c), the commission shall not refer the
6 account to the Franchise Tax Board until the debtor has
7 been provided with a hearing on the debtor's objection
8 and all administrative or judicial review rights following
9 any decision adverse to the debtor have been exhausted.
10 For purposes of this section, it shall be presumed that the
11 debtor received the notice five days after it was mailed by
12 the commission in the absence of evidence to the
13 contrary.

14 (3) If the debtor's objection to the referral is
15 postmarked or, if not postmarked, is received by the
16 commission after the 25th day following receipt by the
17 debtor of the notice described in paragraph (1) of
18 subdivision (c), the commission shall afford the debtor a
19 hearing and all other administrative or judicial review
20 rights, but may refer the account to the Franchise Tax
21 Board prior to the time that the debtor has been provided
22 with a hearing on the debtor's objection.

23 (4) If the debtor shows good cause to the commission
24 that the debtor's delay in filing the objection after the
25 25th day following receipt by the debtor of the notice
26 described in paragraph (1) of subdivision (c) was caused
27 by factors over which the debtor had no control or was
28 caused by mistake, inadvertence, or excusable neglect,
29 paragraph (2) shall apply, and paragraph (3) shall not
30 apply.

31 (5) The commission shall offer the debtor the
32 opportunity to inspect and copy its records related to the
33 debt at its expense prior to any hearing.

34 (6) The hearing to be provided to the debtor shall be
35 conducted by an impartial hearing officer trained in
36 dealing with legal issues and shall not be under the
37 supervision or control of the executive director of the
38 commission. The hearing officer shall receive no pay,
39 bonus, or incentive based on the officer's denial of
40 debtors' claims. Nothing in this paragraph shall prevent

1 the commission from contracting with the Office of
2 Administrative Hearings or any other impartial hearing
3 officer to conduct the hearings required by this section.

4 (7) Notwithstanding any other provision of law, the
5 debtor may seek judicial review of an adverse decision by
6 the hearing officer within six months of the last day on
7 which reconsideration of the decision can be ordered. In
8 determining whether the findings made by the hearing
9 officer are supported by the evidence, the court shall
10 exercise its independent judgment on the evidence.

11 (e) (1) Except as otherwise provided in this section,
12 when a delinquency is referred to the Franchise Tax
13 Board pursuant to this section, the amount of the
14 delinquency and any interest on the delinquency or other
15 amounts that accrued prior to or accrue subsequent to the
16 date of referral, shall be collected by the Franchise Tax
17 Board in any manner authorized under the law for
18 collection of a delinquent personal income tax liability,
19 including, but not limited to, issuance of an order and levy
20 under Article 4 (commencing with Section 706.070) of
21 Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of
22 Civil Procedure in the manner provided for earnings
23 withholding orders for taxes, issuance of a notice to
24 withhold credits or other personal property or things of
25 value pursuant to Section 18670 of the Revenue and
26 Taxation Code, and entering into agreements authorized
27 by Sections 19376 and 19377 of the Revenue and Taxation
28 Code.

29 (2) For purposes of collecting delinquent accounts
30 referred to the Franchise Tax Board under this section:

31 (A) No levy shall be made on the wages of a debtor
32 who the Franchise Tax Board knows has been
33 involuntarily separated from employment until the
34 debtor has been continuously reemployed in the 12
35 months preceding the levy.

36 (B) Notices to withhold issued by the Franchise Tax
37 Board pursuant to Section 18670 of the Revenue and
38 Taxation Code shall include a list of the types of funds that
39 are exempt from levy as described under Section 704.080
40 of the Code of Civil Procedure or any other state or

1 *federal law and shall provide instructions to financial*
2 *institutions and the debtor to contact the Franchise Tax*
3 *Board immediately at the telephone number provided on*
4 *the notice if these exempt funds are attached.*

5 *(f) Any law providing for the collection of a*
6 *delinquent personal income tax liability, including Part*
7 *10.7 (commencing with Section 21001) of Division 2 of the*
8 *Revenue and Taxation Code, which includes Section*
9 *21021 of the Revenue and Taxation Code relating to the*
10 *awarding of damages for reckless disregard of*
11 *procedures, shall apply to delinquencies referred under*
12 *this section in the same manner and with the same force*
13 *and effect and to the full extent as if the language of the*
14 *law had been incorporated in full into this chapter, except*
15 *to the extent that any provision is either inconsistent with*
16 *this chapter or is not relevant to this chapter.*

17 *(g) For any account referred to it by the commission*
18 *pursuant to this section, the Franchise Tax Board shall*
19 *provide notice to the debtor, by first-class mail, at the*
20 *most recent address of record provided by the*
21 *commission or last address known to the board. If the*
22 *notice is returned to the board as undeliverable or the*
23 *board otherwise has knowledge that the notice has been*
24 *misdirected, it shall use reasonable diligence to ascertain*
25 *the current address of the debtor and, if ascertained, shall*
26 *provide notice to the debtor, by first-class mail, at that*
27 *address. The notice required by this subdivision shall be*
28 *written in simple language, in English and at a minimum,*
29 *the debtor's rights, obligations, and process for disputing*
30 *the debt as provided in paragraph (3) or claiming a*
31 *hardship also shall be provided in Spanish, and include*
32 *notice of:*

33 *(1) The amount due.*

34 *(2) The collection actions that the Franchise Tax*
35 *Board is authorized to take.*

36 *(3) The process for claiming a hardship, or claiming*
37 *that the debt is not owed, the debt is not enforceable, or*
38 *a different amount is owed.*

39 *(4) The fact that payment by the debtor of the amount*
40 *due within a certain timeframe, which at a minimum shall*

1 *be 15 days from the date of the notice, or the arrangement*
2 *of a reasonable and affordable payment schedule with the*
3 *commission or the Franchise Tax Board during that same*
4 *time period shall prevent further collection activity.*

5 *(5) The consequences of failing to take action to halt*
6 *the authorized collection action.*

7 *(h) Any information, information sources, or*
8 *enforcement remedies and capabilities available to the*
9 *commission shall be available to the Franchise Tax Board*
10 *for purposes of collecting delinquencies referred under*
11 *this section.*

12 *(i) (1) Except as otherwise provided in paragraph*
13 *(2), the Franchise Tax Board may proceed to collect a*
14 *delinquency referred under this section, in accordance*
15 *with this section and Article 4 (commencing with Section*
16 *706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of*
17 *the Code of Civil Procedure, including the provisions*
18 *concerning notices and hearings contained therein.*

19 *(2) (A) If any debtor requests a hearing concerning*
20 *a claim that the Franchise Tax Board failed to comply*
21 *with this section, including, but not limited to, the*
22 *requirements of notice, the limitations on amounts that*
23 *can be levied, or the existence of a hardship, and a levy*
24 *has not been issued, the board shall not proceed with the*
25 *levy until the Franchise Tax Board determines the*
26 *debtor's claim pursuant to this subdivision. If a levy has*
27 *been issued, the levy shall be held in abeyance until the*
28 *debtor's claim is resolved. The Franchise Tax Board, or*
29 *the commission if the amounts levied have been*
30 *transferred to the commission, shall return to the debtor*
31 *any amounts levied to satisfy the debtor's account if the*
32 *debtor establishes by a preponderance of the evidence*
33 *that the board did not provide the debtor with the notice*
34 *required by subdivision (g).*

35 *(B) If the debtor requests a hearing on any other*
36 *matter, the board shall not proceed with the levy but shall*
37 *refer the account to the commission in compliance with*
38 *subdivisions (c) and (d), provided that the debtor has not*
39 *been provided a hearing by the commission pursuant to*
40 *subdivision (d).*

1 (C) Hearings conducted pursuant to this paragraph
2 shall not be subject to Chapter 4.5 (commencing with
3 Section 11400) of Part 1 of Division 3.

4 (3) (A) No levy on wages pursuant to this section shall
5 exceed the amount authorized by paragraph (10) of
6 subdivision (b) of Section 682.410 of Title 34 of the Code
7 of Federal Regulations.

8 (B) With respect to levies on a debtor's account or
9 accounts in a depository institution, notwithstanding
10 Section 18670 of the Revenue and Taxation Code, if on the
11 date of the levy the aggregate amount in the debtor's
12 account or accounts is two thousand dollars (\$2,000) or
13 less, the amount subject to levy shall not exceed in the
14 aggregate 25 percent of the amount in the account or
15 accounts on the date of the levy.

16 (j) Any agreement entered into pursuant to
17 subdivision (a) shall include all of the following:

18 (1) The criteria, standards, and procedures for
19 referring the delinquencies to the Franchise Tax Board
20 for collection pursuant to this section.

21 (2) A statement that the delinquencies referred to the
22 Franchise Tax Board are delinquent, as defined by the
23 commission under paragraph (1) of subdivision (b), and
24 subject to collection by the Franchise Tax Board.

25 (3) A statement that in the event a person whose
26 delinquency is referred under subdivision (e) notifies the
27 Franchise Tax Board that there is a disagreement as to the
28 amount due subject to collection, the Franchise Tax
29 Board may, upon notification by that person, refer the
30 person to the commission, return the account to the
31 commission, or rescind any collection action that may
32 have been taken. No account that is returned pursuant to
33 this subdivision shall be again referred as a delinquency
34 unless the delinquency has been reduced to a judgment
35 or is an enforceable lien, if required to satisfy due process
36 requirements.

37 (4) A statement that the Franchise Tax Board's
38 departmental costs attributable to the delinquencies
39 referred pursuant to this section shall be reimbursed from
40 a percentage of the referred delinquencies collected by

1 the Franchise Tax Board not to exceed 15 percent of the
2 amount collected by the Franchise Tax Board on behalf
3 of the ~~Student Aid Commission~~ *commission*.

4 (5) A statement that the debtor may be allowed an
5 opportunity to voluntarily enter into an installment
6 payment agreement as provided under Section 19008 of
7 the Revenue and Taxation Code.

8 ~~(h)~~

9 (k) For purposes of this section, “departmental costs
10 attributable to the accounts referred under subdivision
11 ~~(e)~~ (e)” means the Franchise Tax Board’s costs incurred
12 to administer, maintain, and support the collection of
13 delinquencies referred to the Franchise Tax Board
14 pursuant to this section. These costs shall not include
15 development and implementation costs that shall be
16 repaid under a separate agreement between the ~~Student~~
17 ~~Aid—Commission~~ *commission* and the Franchise Tax
18 Board as provided by statute.

19 ~~(i)~~

20 (l) The activities required to implement and
21 administer this section shall not interfere with the
22 primary mission of the Franchise Tax Board to administer
23 Part 10 (commencing with Section 17001), and Part 11
24 (commencing with Section 23001), of Division 2 of the
25 Revenue and Taxation Code.

26 ~~(j)~~

27 (m) Delinquencies referred to the Franchise Tax
28 Board for collection pursuant to this section shall accrue
29 interest in an amount computed by the ~~Student—Aid~~
30 ~~Commission~~ *commission*, as permitted by law.

31 ~~(k)~~

32 (n) In no event shall amounts collected pursuant to
33 this section be construed to be an income tax
34 delinquency. In the case of a bankruptcy action, any
35 delinquency referred under this section shall not be
36 construed to be an income tax delinquency.

37 ~~(t)~~

38 (o) The Franchise Tax Board, ~~—Student—Aid~~
39 ~~Commission~~ *the commission*, and the Controller ~~—may~~
40 *shall* each adopt regulations to implement the

delinquency referral program authorized by this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3. The initial adoption of any emergency regulations after January 1, 1997, shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

~~(m)~~—

(p) It is the intent of the Legislature that subdivisions (b), (c), and (d) apply to the Student Aid Commission and, for any account serviced by the auxiliary organization established pursuant to Article 2.5 (commencing with Section 69552) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code, to that auxiliary organization unless the commission has complied with subdivisions (b), (c), and (d) with respect to that account.

(q) (1) The amendments made to subdivisions (b) to (d), inclusive, during the 1999–2000 Regular Session of the Legislature shall not apply to accounts in the Franchise Tax Board’s inventory on December 31, 1999, unless after that date the board returns the account to the commission.

(2) The amendments made to subdivisions (e) to (p), inclusive, during the 1999–2000 Regular Session of the Legislature shall apply to both of the following:

(A) All accounts referred to the Franchise Tax Board on or after January 1, 2000.

(B) With respect to accounts in the Franchise Tax Board’s inventory on December 31, 1999, all notices of withholding orders issued or other collection actions taken on or after January 1, 2000, and hearings attributable to those notices, orders, or collection actions.

(r) This section shall remain in effect only until January 1, 2002 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002 2003, deletes or extends that date.

O